

**CERTIFICATE OF ELECTRONIC
TRANSMISSION**

I hereby certify that this correspondence for Application No. 10/821,298 is being electronically transmitted to Technology Center 3733, Attention: Michael J. Araj, via EFS-WEB, on April 19, 2007.

<u>/David H. Brinkman/</u>	<u>4/19/07</u>
David H. Brinkman, Reg. No. 40,532	Date

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:	James R. Mujwid et al.
Serial No.:	10/821,298
Filed:	April 9, 2004
Confirmation No.:	1231
Group Art Unit:	3733
Examiner:	Araj, Michael J.
Title:	VARIABLE-AXIS SURGICAL DRIVER
Atty. Docket:	ZMS-MI08US

Cincinnati, Ohio 45202

January 25, 2007

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE

Sir:

This Response is submitted in reply to the Office Action mailed on January 19, 2007. Applicants respectfully traverse the Examiner's final rejection of claims 1, 3-9, 15-21 and 32-37 for the reasons set forth below and respectfully request that the rejections be withdrawn.

Independent claims 1 and 32 are the only independent claims pending in the present application. Each of these claims recites a surgical driver including an attachment piece having a mounting structure for engaging an implant. A shaft is

connected to the attachment piece by a coupling arrangement. In accordance with the principles of the present invention, the coupling arrangement is configured to transfer torque from the shaft to the implant and also permit the shaft to pivot relative to the attachment piece or implant in a range of axial directions relative to longitudinal axis of the attachment piece in response to a side torque being applied to the shaft. In this way, if excessive side forces (e.g., torque) are applied to the surgical driver, the shaft of the driver will pivot or axially angle relative to the attachment piece and the implant mounted to the distal end thereof and redirect the side forces to the attachment piece rather than to the implant. The pivoting movement of the shaft indicates to the operator that excess side loading has been applied to the device. This angular freedom minimizes or prevents the transmission of excess or variable-axis forces to the implant (see Page 6, line 28 through Page 7, line 2 and Page 10, lines 8-26, for example).

The Examiner's position with respect to McGuire et al. as set forth in the Final Office Action is not understood. As previously argued by Applicants, the screwdriver in Fig. 1 of McGuire et al. includes an operating shaft (12) and a drive shaft (14) coupled to a distal end thereof. The screwdriver (10) in Fig. 1 of McGuire et al. includes a drive housing (20) that envelopes the distal end of the operating shaft (12) and a proximal end of the drive shaft (14) so that the drive housing (20) orients the drive shaft (14) at a **fixed** angular position relative to the operating shaft (12) (see Col. 6, line 66 through Col. 7, line 19).

Applicants respectfully submit that the operating shaft (12) in Fig. 1 of McGuire et al. is not permitted to pivot relative to the drive shaft (14) in a range of axial orientations relative to the longitudinal axis of the drive shaft (14) in response to a side torque being applied to the operating shaft (12) as recited in each of independent claims 1 and 32. Rather, the drive head housing (20) orients the operating shaft (12) and the drive shaft (14) at a *fixed* angular position relative to each other so that these components are *not* permitted to pivot relative to each other in a range of axial orientations in response to a side torque being applied to the shaft as recited in each of independent claims 1 and 32. Consequently, Applicants respectfully submit that the rejections of independent claims 1 and 32 as being anticipated by McGuire et al. are improper and should be withdrawn.

Moreover, as claims 3-23 and 33-37 depend from allowable independent claims 1 and 32, respectively, and further as each of these claims recites a combination of elements not taught or suggested by the prior art of record, Applicants submit that these claims are allowable as well.

Conclusion

In view of the foregoing response including the amendments and remarks, this application is submitted to be in complete condition for allowance and early notice to this affect is earnestly solicited. If there is any issue that remains which may be resolved by telephone conference, the Examiner is invited to contact the undersigned in order to resolve the same and expedite the allowance of this application.

Applicants do not believe that any fees are due in connection with this response. However, if such petition is due or any fees are necessary, the Commissioner may consider this to be a request for such and charge any necessary fees to deposit account 23-3000.

Respectfully submitted,

WOOD, HERRON & EVANS, L.L.P.

/David H. Brinkman/

David H. Brinkman, Reg. No. 40,532

2700 Carew Tower
441 Vine Street
Cincinnati, Ohio 45202
(513) 241-2324 - Voice
(513) 421-7269 - Facsimile